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**Twentieth Century Draperies, Inc. and Local 819,  
International Brotherhood of Teamsters, AFL-  
CIO. Case 2-CA-30683**

May 24, 1999

**DECISION AND ORDER**

BY CHAIRMAN TRUESDALE AND MEMBERS FOX  
AND LIEBMAN

Upon a charge filed by the Union on August 12, 1997, and amended charges filed September 26, 1997, and April 1, 1998, respectively, the General Counsel of the National Labor Relations Board issued a complaint on October 20, 1998, against Twentieth Century Draperies, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charges, and complaint, the Respondent failed to file an answer.

On April 2, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On April 6, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated February 8, 1999, notified the Respondent that unless an answer were received by February 22, 1999, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a domestic corporation, with an office and place of business in New York, New York, has been engaged in the manufacture and non-retail sale and distribution of draperies. Annu-

ally, in the course and conduct of its business operations, the Respondent sold and shipped from its facility products, goods and materials valued in excess of \$50,000 to enterprises which are directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following employees of the Respondent constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by the Respondent at its facilities, and excluding all executives, office workers, salesmen, confidential employees, foremen and supervisors as defined in the National Labor Relations Act, as amended.

Since about April 1, 1997, the Union has been the exclusive collective-bargaining representative of the unit. This recognition is embodied in the collective-bargaining agreement between the Union and the Respondent, which was effective from October 1, 1995, to September 30, 1997. The collective-bargaining agreement required the Respondent to make monetary contributions to the Local 819 International Brotherhood of Teamsters Welfare Fund and to the Local 819 International Brotherhood of Teamsters Pension Fund on behalf of the unit employees.

Since on or about September 30, 1997, and until about December 31, 1997, the Respondent has failed and refused to make contractually required contributions to the Local 819 International Brotherhood of Teamsters Welfare Fund and to the Local 819 International Brotherhood of Teamsters Pension Fund.

Although the terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining, the Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain.

**CONCLUSION OF LAW**

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1), (5), and (d) and Section 2(6) and (7) of the Act.

**REMEDY**

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5)

and (1) of the Act by failing and refusing, since on or about September 30, 1997, and until about December 31, 1997, to make contractually required contributions to the Local 819 International Brotherhood of Teamsters Welfare Fund and to the Local 819 International Brotherhood of Teamsters Pension Fund, we shall order the Respondent to make whole its unit employees by making all contractually required contributions to the Union's welfare and pension funds, including any additional amounts applicable to such delinquent payments as determined pursuant to *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>1</sup>

#### ORDER

The National Labor Relations Board orders that the Respondent, Twentieth Century Draperies, Inc., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing, since on or about September 30, 1997, and until December 31, 1997, to make contractually required contributions to the Local 819 International Brotherhood of Teamsters Welfare Fund and to the Local 819 International Brotherhood of Teamsters Pension Fund.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make the contractually required contributions to the Local 819 International Brotherhood of Teamsters Welfare Fund and to the Local 819 International Brotherhood of Teamsters Pension Fund that were not made from about September 30, 1997, until about December 31, 1997, as set forth in the remedy section of this decision.

(b) Make whole the unit employees for any loss of benefits or expenses ensuing from its failure to make the required contributions to the funds from about September 30, 1997, until about December 31, 1997, as set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back-pay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in New York, New York, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 30, 1997.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 24, 1999

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| John C. Truesdale, | Chairman |
| Sarah M. Fox,      | Member   |
| Wilma B. Liebman,  | Member   |

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>1</sup> To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the respondent otherwise owes the fund.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

## NOTICE TO EMPLOYEES

## POSTED BY ORDER OF THE

## NATIONAL LABOR RELATIONS BOARD

## An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to make contractually required contributions to the Local 819 International Brotherhood of Teamsters Welfare Fund and to the Local 819 International Brotherhood of Teamsters Pension Fund.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make the contractually required contributions to the Local 819 International Brotherhood of Teamsters Welfare Fund and to the Local 819 International Brotherhood of Teamsters Pension Fund that were not made from about September 30, 1997, until about December 31, 1997.

WE WILL make whole our unit employees for any loss of benefits or expenses ensuing from our failure, from about September 30, 1997, until about December 31, 1997, to make contractually required contributions to the Local 819 International Brotherhood of Teamsters Welfare Fund and to the Local 819 International Brotherhood of Teamsters Pension Fund, pursuant to our 1995–1997 agreement with the Union, with interest.

TWENTIETH CENTURY DRAPERIES, INC.